



November 10, 2000

Ms. Tenley Aldredge
Assistant County Attorney
Travis County
314 West 11th Suite 300
P. O. Box 1748
Austin, Texas 78767

OR2000-4384

Dear Ms. Aldredge:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 140661.

The County of Travis (the "county") received a request for 1) "[c]opies of memoranda, reports, guidelines, procedure manuals, e-mails, letters and any other documents relating to 'Sentencing Circles' as implemented by your office" and 2) "[a] list of the cases in which 'Sentencing Circles' have been used by your office, the offense or offenses involved, the cause number(s), and the disposition of each case." You state that a vast majority of the requested information has been released to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.108, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.111 excepts from disclosure "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ), and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. An agency's policymaking functions do not encompass internal administrative or personnel matters; disclosure of information relating to such matters will not inhibit free discussion

among agency personnel as to policy issues. ORD 615 at 5-6. Additionally, section 552.111 does not generally except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. ORD 615 at 4-5. After reviewing the documents that you have marked as excepted from public disclosure under section 552.111, we conclude that this section excepts some of the marked information from public disclosure. We have indicated the information the county may withhold under section 552.111. The county must release the remainder of this information to the requestor.

We now address the information the county has marked as excepted from public disclosure under section 552.108(a)(1). Initially, we note that these documents contain information that appears to have been filed with a court. Information filed with a court is generally a matter of public record and may not be withheld from disclosure. Gov't Code § 552.022(a)(17); *Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54 (Tex. 1992). We have marked the documents to be released pursuant to section 552.022(a)(17). Section 552.108(a) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime." Generally, a governmental body claiming section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(a); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the requested information relates to pending criminal investigations. You state that the county has not yet completed its prosecution of these particular cases. You state that release of this information at this time would interfere with the county's ongoing detection, investigation, and prosecution of the underlying crimes. Based upon these representations, we conclude that the release of this information would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Accordingly, we agree that the county may withhold from public disclosure the information it marked as excepted under section 552.108(a)(1).¹

The county also submitted information that the county asserts is excepted from public disclosure pursuant to sections 552.108(a)(3) and 552.108(b)(3). Section 552.108 provides in pertinent part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if:

(3) it is information that:

¹Because we find section 552.108(a)(1) dispositive regarding these documents, we need not address your section 552.103 claim for these documents.

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state [and]

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution . . . if:

(3) the internal record or notation:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

Gov't Code § 552.108(a)(3), (b)(3). You state generally that the information you indicate as excepted under section 552.108(a)(3), (b)(3) was prepared or obtained by prosecutors within the county's office in anticipation of or in the course of preparing the criminal prosecution of the underlying cases. After reviewing your assertion and the submitted documents, we find section 552.108 (b)(3) is applicable only to a portion of these documents. As for the remainder of these documents, we find that you have not sufficiently demonstrated, for the purposes of the statute, that these documents were prepared by an attorney or reflect the mental impressions or legal reasoning of an attorney representing the state. Therefore, we find that the county may not withhold the remainder of the documents that you claim are excepted from disclosure under section 552.108(a)(3), (b)(3).

However, these documents contain information that must be withheld pursuant to section 552.101 of the Government Code. Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses confidentiality provisions such as section 42.12(9)(j) of the Texas Code of Criminal Procedure. Section 9(j) of article 42.12 of the Code of Criminal Procedure makes confidential, with exceptions which do not appear to apply here, all information obtained in connection with a presentence investigation report. You must withhold the submitted presentence investigation materials under section 552.101 in conjunction with section 42.12(9)(j) of the Texas Code of Criminal Procedure.

Section 552.101 also encompasses the common law right to privacy. Information is protected by the common law right to privacy if (1) the information contains highly intimate or embarrassing facts the release of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). In *Industrial Foundation*, the Texas Supreme Court considered intimate and embarrassing information such as that relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683; *see also* Open Records Decision Nos. 470 (concluding that fact that a person broke out in hives as a result of severe emotional distress is excepted by common law privacy), 455 (1987) (concluding that kinds of prescription drugs a person is taking are protected by common law privacy), 422 (1984) (concluding that details of self-inflicted injuries are presumed protected by common law privacy), 343 (1982) (concluding that information regarding drug overdoses, acute alcohol intoxication, obstetrical/gynecological illnesses, convulsions/seizures, or emotional/mental distress is protected by common law privacy). After reviewing the submitted information, we conclude that section 552.101 in conjunction with the common law right to privacy excepts some of the information from public disclosure. The county must withhold the information we have marked pursuant to section 552.101 in conjunction with the common law right to privacy.

The information the county has marked as excepted under section 552.108(a)(3), (b)(3) also contains a social security number. Social security numbers may be withheld in some circumstances under section 552.101 of the Government Code. A social security number or "related record" may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that the social security number in the report here is confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure on the basis of that federal provision. We caution, however, that section 552.353 of the Public Information Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained pursuant to any provision of law, enacted on or after October 1, 1990.

Finally, these documents also contain motor vehicle information that is confidential under section 552.130 of the Government Code. Section 552.130 excepts from required public disclosure information that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency

of this state. Therefore, under section 552.130, the county must withhold the Texas driver's license number that appears in the submitted documents.

In summary, the county must release the documents that have been filed with the court under section 552.022(a)(17). The county must redact the Texas driver's license number that appears in the documents. The county must withhold the presentencing documents under section 552.101 in conjunction with section 42.12(9)(j) of the Texas Code of Criminal Procedure. The county may withhold the portions of the documents that this office has indicated fall within the purview of section 552.111, as well as, the documents marked excepted from public disclosure under section 552.108(a)(1). The county also may withhold the documents this office has marked as excepted from public disclosure under section 552.108(b)(3). The county also may have to withhold the social security number that appears in the documents as explained in the above discussion. The county must release the remainder of the documents to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

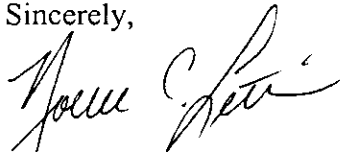
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Noelle C. Letteri
Assistant Attorney General
Open Records Division

NCL/seg

Ref: ID# 140661

Encl. Submitted documents

cc: Ms. Leslie Jackson
2112 Palm Vista Drive
Pflugerville, Texas 78660
(w/o enclosures)